

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

SEP 12 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2011-0324
	)	DEPARTMENT A
	)	
Appellee,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
NEAL JAMES ROLF,	)	the Supreme Court
	)	
Appellant.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20104214001

Honorable Terry L. Chandler, Judge

AFFIRMED

Lori J. Lefferts, Pima County Public Defender  
By Rebecca A. McLean

Tucson  
Attorneys for Appellant

H O W A R D, Chief Judge.

¶1 Appellant Neal Rolf was charged with first-degree murder of S. A jury found him guilty of manslaughter, and the trial court sentenced him to the presumptive prison term of 10.5 years. Appointed counsel has filed an appellate brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), avowing she has

reviewed the entire record and has not been able to find any issue to raise on appeal that is even “arguably meritorious.” Rolf has not filed a supplemental brief. Pursuant to *Anders* and its progeny, counsel has asked this court to search the record for fundamental error.

¶2 We have conducted the review counsel requested and have found no reversible error. Although the jury did not find sufficient evidence to support a guilty verdict on the charged offense of first-degree murder, it found Rolf guilty of the lesser-included offense of manslaughter, a dangerous offense. The trial court had instructed the jury that the charged offense of first-degree murder included, inter alia, the lesser offense of manslaughter. Materially consistent with A.R.S. § 13-1103 and consistent with A.R.S. § 13-105(10)(c), the court instructed the jury, “The crime of manslaughter requires proof that the defendant caused the death of another person,” and the person “was aware and showed a conscious disregard of a substantial and [un]justifiable risk of death. The risk must be such that disregarding it was a gross deviation from the standard of conduct that a reasonable person would observe in the situation.”<sup>1</sup>

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<sup>1</sup>Section 13-1103(A)(1) provides that a person commits manslaughter by “[r]ecklessly causing the death of another person.” During the settling of instructions the trial court acknowledged that recklessness is an element of manslaughter under this subsection of the statute, but the instruction, which the court read to the jury at the end of the trial, omitted the word “recklessly.” Any error, however, was clearly harmless because the instruction incorporated the definition of “recklessly” as provided in § 13-105(10)(c). Similarly, although the transcript reflects the court used the word “justifiable” risk rather than “unjustifiable” in defining manslaughter, the written instruction used the word “unjustifiable.” The transcript further reflects that in reading the general definition of recklessly, the court used the word “unjustifiable.” Assuming the transcript accurately reflects what the court said, if there was error it was harmless.

¶3 Viewed in the light most favorable to sustaining the verdict, the evidence established that Rolf believed the intoxicated victim had been in the army for thirteen years and had been trained for combat; that she had become agitated and enraged before the shooting, threatening Rolf verbally, performing karate-style kicks, punches, and chops, telling him she could kill him with her hands, and stating she was going to kill him. Rolf left the room at one point, returned with his shotgun, and shot the victim in the head at close range, killing her. From this evidence the jurors readily could find beyond a reasonable doubt that Rolf was guilty of manslaughter.

¶4 Having found no reversible error at trial or any error at sentencing that would require us to disturb the sentence the court imposed, we affirm the conviction and the sentence.

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom  
PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.  
J. WILLIAM BRAMMER, JR., Judge